

Department of Environmental Protection and Resource Management
105 West Chesapeake Avenue
Towson, Maryland 21204

In the Matter of

Civil Citation No.04-0003-C001

Saturn Universal LLC
7301 York Road
Towson, MD 21204

3 A McCormick Place (Avenue)

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on December 16, 2009, for a Hearing on a citation for violations of the Baltimore County Code (BCC) article 33, title 5, section 103, failure to stabilize or remove materials, failure to meet the December 1, 2009 deadline issued by the Hearing Officer to resolve violation on residential property known as 3 A McCormick Place (Avenue), 21206.

On December 2, 2009, pursuant to § 3-6-205, Baltimore County Code, Inspector Keith Kelly issued a Code Enforcement citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$55,500.00 (fifty five thousand five hundred dollars).

The Respondent failed to request a Code Enforcement Hearing and/or failed to appear after requesting a Hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a Code Enforcement Hearing or if the violator (Respondent) fails to appear after requesting a Hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was issued on July 8, 2009 advising Respondent that the Stockpile Permit expires July 16, 2009 and requesting a written schedule for removal and returning site to original condition, to be submitted by July 30, 2009. A Stop Work Order was issued on July 16, 2009, stating that the Stockpile Permit has expired, no written correspondence has been received and requesting compliance with Correction Notice. A second Stop Work Order and Illegal Continuance notice was issued on September 24, 2009 advising that Respondent has an expired permit for stockpile with no positive progress towards obtaining a Grading Permit for the site, and requesting Respondent (1) remove stockpile and restore site to original grades/conditions, and once completed seed and mulch all disturbed areas; (2) call for re-inspection once completed, and noting that failure to comply will result in civil fines and possibly loss of securities posted to the permit.

B. A Citation was issued on November 4, 2009 for violation of County permit requirements and for violation of Stop Work Order. A Hearing was held on November 18, 2009 on that Citation. At that Hearing, Respondent was represented by attorney James Larrimore, Esq. Also appearing at the Hearing was Mr. Joseph Buchanan, who stated he was the contract purchaser of the subject property. Appearing at the Hearing representing DEPRM were inspector Keith Kelley and supervisor Kevin Sharbanda. Inspector Kelley has inspected this property and taken photographs showing the continued stockpile use. Supervisor Sharbanda testified that the County does not extend stockpile permits because stockpile use is a temporary condition. If the stockpile use is needed longer than one year, the property owner must obtain a Grading Permit and follow required regulations. DEPRM requests that the property owner be required to restore the original grade of the site, remove construction materials and stabilize the site to prevent continued erosion.

C. Attorney Larrimore stated that the property has been approved for subdivision and development with townhouses and single family houses, but that complications have arisen in obtaining required permits due to wetlands on the property. A wetlands fill permit is required before a grading permit can be obtained. County and state agencies are involved in the approval process. Because compliance is the goal of code enforcement, and it appeared there was significant uncertainty about

what steps Respondent needed to take and how much time would be required, this Hearing Officer agreed to delay enforcement of the Citation and give Respondent an opportunity to submit a proposed timeline and plan for compliance. The Hearing Officer asked Respondent to submit a proposed timeline and settlement plan, jointly agreed with DEPRM if possible, by December 1, 2009. No correspondence was received from Respondent.

D. This Citation was issued on December 2, 2009. The same \$55,500 proposed civil penalty is assessed on this second Citation. The Hearing was prescheduled for December 16, 2009. Respondent did not appear for the Hearing and did not send a representative. The Hearing Officer has subsequently telephoned Respondent's attorney twice to advise of the pending Citation and to request a proposed plan and timeline for compliance, to be submitted by December 29, 2009. A proposed timeline was submitted by Respondent's attorney, James B. Larrimore, Esq., on December 28, 2009.

E. Photographs in the file show a large area of bare, cleared dirt; at least one large stockpile of topsoil that appears to be partially covered with grass or other vegetation; pipes and concrete barriers and steel girders staged for later use; and heavy equipment including a bulldozer and an excavator.

F. Documents in the file include Building Permit #B698822, issued July 16, 2008 for "temporary stockpile for future residential sub-division, 249,500SF disturbed area. Prior to expiration date, stockpile area must be returned to original grade and stabilized w/permanent vegetation." The site is described as 11.79 acres. Applicable Regulations include DEPRM Regulation Title 1, Subtitle 04 (Excavating, Grading, Sediment Control, and Forest Management), Chapter 01.03 (Temporary Stockpile Permits): "Temporary stockpile permits may be issued, subject to the following conditions: (1) The description of work on the permit application shall include "temporary stockpile" in its language; (2) The permit shall be issued for a period not to exceed one (1) year; (3) No extensions beyond the expiration date will be approved; and (4) Prior to expiration, the area shall be returned to original grade and permanently stabilized."

G. Since July 2009, Respondent has failed to respond appropriately to numerous County correction notices, Stop Work Orders, and Citations. Respondent's Temporary Stockpile permit expired on July 16, 2009. Respondent was required by the terms of that permit to restore the stockpile area to its original grade and stabilize the topsoil prior to expiration date. Or, Respondent could have obtained a Grading Permit, which would have allowed continued re-grading of the site in compliance with applicable regulations. Respondent failed to do either. The applicable grading, excavating and sediment control laws and regulations are in place to protect the environment and to protect neighbors from damage due to improper re-grading and uncontrolled erosion. See BCC Article 33, Title 5. DEPRM is entitled to have its Citation enforced.

H. Respondent's proposed timeline for correction was reviewed by DEPRM. By email to Respondent's attorney dated December 29, 2009, Mike Moorefield (DEPRM) stated that a modification requested by DEPRM at the Hearing was not adequately addressed, namely that the storage and staging activity within the former stockpile area must cease to prevent erosion and sedimentation. Respondent did not submit a revised proposal, but DEPRM notified the Hearing Officer on January 15, 2010 that re-inspection of the property found that "They have complied with our additional request to remove all material and equipment from the site. The site is now idle, vacant of material and secured with lock as we requested."

I. This order will adopt the proposed timeline submitted by Respondent for correction of the violations, with additional time allowance added on account of the delay in issuing this Final Order, and if the timeline is followed the civil penalty will be significantly reduced. Respondent is advised that this Final Order does not in any way affect or diminish the authority of County or State agencies to enforce applicable codes or regulations, such as sediment control and other environmental regulations, during the period covered by this correction timeline.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$20,000.00 (twenty thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$500.00 (five hundred dollars) if the following corrections are made within the time provided below:

1. By February 15, 2010, Owner will purchase off-site wetlands mitigation, and provide evidence to Baltimore County.
2. By February 15, 2010, Owner will submit to Maryland Department of the Environment (1) two complete sets of final stormwater management plans and final grading plans, approved by Baltimore County, and (2) evidence of off-site wetlands mitigation purchase.
3. By March 15, 2010, Owner will obtain approval from MDE for wetlands fill permit.
4. By April 15, 2010, Owner will obtain final grading permit issued by Baltimore County, to include fill of the wetlands.
5. By April 15, 2010, or upon issuance of the final grading permit, Owner will commence grading and removal of the stockpile.
6. By June 15, 2010, or within 60 days of commencement of work, final grading will be completed, and stockpile removed.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 28th day of January 2010.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer